

9  
Office - Supreme Court, U.  
S. GOVERNMENT

APR 6 1942

CHARLES ELIHU GEORGE  
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1941.

—  
**T116**  
No. —

THE UNITED STATES OF AMERICA *ex rel* JOHN C. McDERMOTT,  
*Petitioner*,

—against—

ARTHUR G. JAEGER, United States Marshal for the Eastern  
District of New York, and E. E. THOMPSON, Warden of  
Federal Detention Headquarters, New York City,  
*Respondents.*

—  
PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF.  
—

HOMER L. LOOMIS,  
*Counsel for Petitioner.*

—  
—



## INDEX.

	Page
Petition for Writ of Certiorari-----	1
A. Summary Statement of Matter Involved-----	2
B. Reasons Relied on For Allowance of Writ-----	4
Brief in Support of Petition for Certiorari-----	5
A. Introductory Statements-----	5
1. Report of Opinions Below -----	5
2. Jurisdiction -----	6
3. Specifications of Error-----	6
B. Argument -----	6
Summary of Argument-----	6
Point I. The Statute on Whose Authority the Petitioner's Appeal Was Dismissed by the Circuit Court of Appeals Has No Application to This Case -----	7
A. This is Not a Case Within the Purview of 18 U. S. C. A., Sec. 591, as to Which Alone the Right of Appeal is Abolished by 28 U. S. C. A., Sec. 463-----	7
1. The Crime is Not Charged to Have Been Committed Against the United States -----	8
2. The Removal Sought Was Not From One District to Another of the United States-----	9
3. The Canal Zone Code Provides For Extradition, Not Removal, To and From That Possession -----	11
4. An Indictment is a <i>Sine Qua Non</i> to a Case Within the Removal Statute, Where the Offense Charged is An Infamous Crime -----	14
Point II. The Writ of Certiorari Prayed For Should Be Granted to the End That This Court May Review and Reverse the Judgments Entered Below	17

## TABLE OF STATUTES.

	Page
Act of February 13, 1925-----	6, 7
Act of February 13, 1925, c. 229, Sec. 6-----	7
Act of June 19, 1934, c. 667, Secs 861-871-----	11, 12
Sec. 861 -----	12
Sec. 862 -----	12
Sec. 863 -----	12
Sec. 864 -----	12, 13, 14
Sec. 868 -----	13
Sec. 870 -----	13
Act of June 29, 1938, c. 806-----	3, 6, 7
Canal Zone Code -----	11-13, 14, 17
Judicial Code, Sec. 240(a)-----	6
Revised Statutes of United States, Sec. 1014-----	15
Sec. 5278-----	12, 13, 14
Statutes at Large of United States, Vol 43, p. 938-----	6
Vol. 43, p. 940 -----	7
Vol. 48, p. 1122 -----	11
Vol. 52, p. 1232 -----	3, 6, 7
United States Code, Tit. 18, Sec. 502-----	2, 9
Tit. 18, Sec. 591 3, 4, 6, 8, 9, 10, 11, 14, 15, 16, 17	17
Tit. 18, Sec. 662 -----	12, 13, 14
Tit. 28, Sec. 347 -----	6
Tit. 28, Sec. 463 -----	4, 6, 7, 9, 17
United States Constitution, Fourth Amendment -----	17
Fifth Amendment -----	4, 15, 16, 17

## TABLE OF CASES

<i>Beavers v. Henkel</i> , 194 U. S. 73-----	15, 16
<i>Ex Parte Krause</i> , 228 Fed. 547, (W. D. Wash.)-----	11
<i>Hurtado v. California</i> , 110 U. S. 516-----	16
<i>Old Colony Trust Co. v. Commissioner of Internal Revenue</i> , 301 U. S. 379-----	8
<i>United States v. Haskins</i> , Fed. Cas. No. 15,322 (Cal.)-----	11
<i>United States v. Mulligan</i> , 295 U. S. 396, 400-----	17

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1941.

No. —————

THE UNITED STATES OF AMERICA *ex rel* JOHN C. McDERMOTT,

—*against*—

ARTHUR G. JAEGER, United States Marshal for the Eastern  
District of New York, and E. E. THOMPSON, Warden of  
Federal Detention Headquarters, New York City,  
*Respondents.*

---

## PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF.

---

### PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate  
Justices of the United States Supreme Court:

The petition of the relator above-named, on behalf of  
Guiseppe Ferrara, Luigi Rosato, Salvatore Piccaluga and  
Eusibio Cecearelli, defendants, respectfully allege and pro-  
ounds as follows:

**A.****SUMMARY STATEMENT OF MATTER INVOLVED.****L**

The petition for a writ of habeas corpus was filed by the above-named relator on behalf of Guiseppe Ferrara, Luigi Rosato, Salvatore Piccaluga and Eusibio Cecearelli, defendants, on the 21st day of May, 1941, and the writ was issued on the same day returnable on the 22nd day of May, 1941.

The petition (R. 3-4)\* set forth in substance that the four defendants were held by Arthur G. Jaeger, United States Marshal for the Eastern District of New York, and by E. E. Thompson, Warden of the Federal Detention Headquarters in New York City, to answer an information filed in the District Court for the Canal Zone. And the petition substantially averred *inter alia* that the information charged no crime against the United States Government and presented no probable cause for believing the defendants guilty of the crime alleged.

The defendants were produced on the return day, at which time it was made to appear that the information (R. 12-13) filed in the Canal Zone as aforesaid, to answer which the prisoners were being held, was entitled "*The Government of the Canal Zone vs. Guiseppe Ferrara, et al.*" Defendants, and charged the said defendants with having damaged certain machinery of the Italian steamship Conte Biancamano with an intention to injure and endanger the safety of the said steamer and her cargo, in violation of Section 502, Title 18, United States Code, "against the peace and dignity of the Government of the Canal Zone."

It further appeared that the information was signed by Daniel E. McGrath, District Attorney for the Canal Zone, (R. 13) on the basis of the sworn testimony of witnesses

---

\* This and similar notations refer to the pages of Transcript of Record filed herewith.

whose names were indorsed on the back thereof (R. 14).

2.

The United States District Judge before whom the writ was returned vacated the same on June 11, 1941, and ordered defendants remanded to the custody of the said Arthur G. Jaeger, United States Marshal.

An appeal was seasonably noticed and perfected in the United States Circuit Court of Appeals for the Second Circuit from the order vacating the writ. That court dismissed the appeal (R. 25 *et seq.*) substantially on the ground that the information charged an offense against the United States in a District of the United States; that, therefore, the arrest and detention of the prisoners was authorized by Section 591 of Title 18, United States Code; and that, since that was so, the relator had no right of appeal because of the Act of June 29, 1938, c. 806, 52, Stat. 1232, (U. S. C. A., Sec. 463).

3.

Petitioner feels aggrieved and complains of the proceedings had below for the following reasons:

a. The offense for which the prisoners were held to answer was one charged in the information to have been committed "against the peace and dignity of the Government of the Canal Zone" and, therefore, not an offense of the kind described in Section 591 of Title 18, United States Code;

b. The District Court for the Canal Zone is not a court of the United States within the meaning of Section 591 of Title 18, United States Code;

c. For either and both of the foregoing reasons Section 591 of Title 18, United States Code, furnished no authority for the arrest and detention of the defendants, and, in consequence relator's right to appeal was not cut off by

Section 463 of Title 28, United States Code; and

d. Under the Fifth Amendment of the Constitution, a condition precedent to the application of Section 591 of Title 18, United States Code, in the case of infamous crimes, such as was here alleged, is a presentment by a grand jury, for which further reason Section 463 of Title 28, United States Code, was ineffective to cut off relator's right of appeal.

B.

**REASON RELIED ON FOR ALLOWANCE OF WRIT.**

The reasons relied on by petitioner for an allowance of the writ herein prayed for are that the Circuit Court of Appeals for the Second Circuit has:

1. Rendered a decision in conflict with the Fifth Amendment of the Constitution of the United States and with the weight of judicial authority;
2. In deciding important questions of general law, reached untenable conclusions on unsound premises and in a way that varies from the usual course of judicial decisions;
3. Decided important questions of federal law that have not been, but should be, settled by this Court;
4. Decided federal questions in a way that violates the Fifth Amendment to the Constitution of the United States and runs counter to the applicable decisions of this Court; and
5. So far departed from the customary course of judicial proceedings, as to call for the exercise of this Court's power of review and reversal.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Second Circuit should be granted.

HOMER L. LOOMIS,  
*Counsel for Petitioner.*

